

MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

JULY 30, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 3486]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3486) to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and catastrophic events involving marine mammals, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Health and Stranding Response Act".

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years;
- (2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events;
- (3) An accurate assessment of marine mammal health, health trends in marine mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live;
- (4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events

and may serve as an indicator of the general health of our coastal and marine environments.

(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.

(6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.

(7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.

SEC. 3. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM.

(a) IN GENERAL.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following new title:

“TITLE III—MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

“SEC. 301. ESTABLISHMENT OF PROGRAM.

“(a) ESTABLISHMENT.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program, to be known as the ‘Marine Mammal Health and Stranding Response Program’.

“(b) PURPOSES.—The purposes of the Program shall be to—

“(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

“(2) correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and

“(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 304.

“SEC. 302. DETERMINATION, DATA COLLECTION AND DISSEMINATION.

“(a) DETERMINATION FOR RELEASE.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

“(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update periodically existing information on—

“(1) procedures and practices for—

“(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

“(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

“(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

“(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

“(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

"(c) AVAILABILITY.—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

SEC. 303. STRANDING RESPONSE AGREEMENTS.

"(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) or section 112(c) in response to a stranding.

"(b) REQUIRED PROVISION.—An agreement under this subsection shall—

"(1) specify each person who is authorized to perform activities under the agreement; and

"(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

"(c) REVIEW.—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

SEC. 304. UNUSUAL MORTALITY EVENT RESPONSE.

"(a) RESPONSE.—

"(1) WORKING GROUP.—

"(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

"(i) determining whether an unusual mortality event is occurring;

"(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

"(iii) developing the contingency plan in accordance with subsection

(b), to assist the Secretary in responding to unusual mortality events.

"(B) The Federal Advisory Committee Act shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

"(2) RESPONSE TIMING.—The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

"(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

"(B) within 48 hours after receiving such notification—

"(i) make a determination as to whether an unusual mortality event is occurring;

"(ii) inform the stranding network participant of that determination; and

"(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

"(b) CONTINGENCY PLAN.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

"(2) CONTENTS.—The contingency plan required under this subsection shall include—

"(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

"(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

"(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

"(D) such requirements as are necessary to—

"(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

"(ii) assist in identifying the cause or causes of an unusual mortality event;

"(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

"(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

"(c) **ONSITE COORDINATORS.**—

"(1) **DESIGNATION.**—

"(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

"(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

"(C) If, because of wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

"(2) **FUNCTIONS.**—

"(A) an Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

"(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

"(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

"(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

"SEC. 305. **UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.**

"(a) **ESTABLISHMENT OF FUND.**—There is established in the Treasury a fund to be known as the 'Marine Mammal Unusual Mortality Event Fund', which shall consist of amounts deposited into the Fund under subsection (c).

"(b) **USES.**—

"(1) **IN GENERAL.**—Amounts in the Fund—

"(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

"(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 304(b) or under the direction of an Onsite Coordinator for an unusual mortality event; and

"(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

"(B) shall remain available until expended.

"(2) **PENDING CLAIMS.**—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

"(c) **DEPOSITS INTO THE FUND.**—There shall be deposited into the Fund—

"(1) amounts appropriated to the Fund;

"(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

"(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

"(d) **ACCEPTANCE OF DONATIONS.**—For purposes of carrying out this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

"SEC. 306. **LIABILITY.**

"(a) **IN GENERAL.**—A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

"(1) in accordance with that agreement; and

"(2) in the case of an unusual mortality event, in accordance with—

"(A) the contingency plan issued under section 304(b);

"(B) the instructions of an Onsite Coordinator designated under section 304(c); or

"(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

"(b) LIMITATION.—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

SEC. 307. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

"(a) TISSUE BANK.—

"(1) IN GENERAL.—The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the 'National Marine Mammal Tissue Bank'.

"(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.—The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

"(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

"(B) documentation of procedures used for collecting, preparing, and archiving those samples.

"(3) SOURCE OF TISSUE.—In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources, in the wild including—

"(A) incidental takes of marine mammals;

"(B) subsistence-caught marine mammals;

"(C) biopsy samples; and

"(D) any other samples properly collected.

"(b) TISSUE ANALYSIS.—The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for monitoring and measuring, by use of the most effective and advanced diagnostic technologies and tools practicable overall health trends in representative species or populations of marine mammals, including—

"(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

"(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

"(c) DATA BASE.—

"(1) IN GENERAL.—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

"(2) CONTENTS.—The data base established under this subsection shall include—

"(A) reference data on the health of marine mammals and populations of marine mammals; and

"(B) data on species of marine mammals that are subject to unusual mortality events.

"(d) ACCESS.—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

"(1) marine mammal tissues in the Tissue Bank;

"(2) analyses conducted pursuant to subsection (b); and

"(3) marine mammal data in the data base maintained under subsection (c); which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated—

"(1) to the Secretary for carrying out this title (other than sections 305 and 307) \$250,000 for each of fiscal years 1993 and 1994;

"(2) to the Secretary for carrying out section 307, \$250,000 for each of fiscal years 1993 and 1994; and

"(3) to the Fund, \$500,000 for fiscal year 1993."

(b) IMPLEMENTATION.—The Secretary of Commerce shall—

(1) in accordance with section 302(a) and 302(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, and not later than 24 months after the date of enactment of this Act—

(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

(B) collect and make available information on marine mammal health and health trends;

(2) in accordance with section 304(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event—

(A) in proposed form by not later than 18 months after the date of enactment of this Act; and

(B) in final form by not later than 24 months after the date of enactment of this Act.

SEC. 4. CONFORMING AMENDMENTS.

The Marine Mammal Protection Act of 1972 is amended—

(1) in section 102(a) (16 U.S.C. 1372(a)) by inserting "or title III" after "this title";

(2) in section 109(h)(1) (16 U.S.C. 1379(h)(1)) by inserting "or title III" after "this title"; and

(3) in section 112(c) (16 U.S.C. 1382(c)) by inserting "or title III" after "this title".

SEC. 5. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended—

(1) in paragraph (11)—

(A) by striking "The term" and inserting "(A) Except as provided in subparagraph (B), the term";

(B) by redesignating subparagraph (A) as clause (i);

(C) by redesignating subparagraph (B) as clause (ii); and

(D) by adding at the end the following:

"(B) In title III, the term 'Secretary' means the Secretary of Commerce."

and

(2) by adding at the end the following:

"(15) The term 'Fund' means the Marine Mammal Unusual Mortality Event Fund established by section 305(a).

"(16) The term 'Office' means the Office of Protected Resources, in the National Marine Fisheries Service.

"(17) The term 'stranding' means an event in the wild in which—

"(A) a marine mammal is dead and—

"(i) is on a beach or shore of the United States, or

"(ii) is in waters under the jurisdiction of the United States (including any navigable waters); or

"(B) a marine mammal is alive and is—

"(i) on a beach or shore of the United States and unable to return to the water;

"(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

"(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

"(18) The term 'stranding network participant' means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

"(19) The term 'Tissue Bank' means the National Marine Mammal Tissue Bank provided for under section 307(a).

"(20) The term 'unusual mortality event' means a stranding that—

"(A) is unexpected;

"(B) involves a significant die-off of any marine mammal population; and

"(C) that demands immediate response."

Amend the title so as to read:

A bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and unusual mortality events involving marine mammals.

SUMMARY

H.R. 3486 was introduced on October 3, 1991, by Mr. Carper. The bill directs the Secretary of Commerce ("the Secretary") to provide for the examination of the health of marine mammal populations and for effective, coordinated responses to strandings and catastrophic events (unusual mortality events) involving marine mammals.

H.R. 3486 amends the Marine Mammal Protection Act by adding a new Title III, establishing a program to respond to unusual mortality events, and providing guidance and quality control for marine mammal tissue banking and tissue analyses. H.R. 3486 also offers stranding network participants (individuals, organizations and institutions, whose efforts account for the majority of activities related to marine mammal strandings) access to an information clearinghouse, a marine mammal information data bank, and a marine mammal tissue bank in exchange for their efforts on behalf of marine mammals.

PURPOSE OF THE BILL

The purpose of H.R. 3486 is to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective, coordinated responses to unusual mortality events involving marine mammals.

BACKGROUND AND NEED FOR LEGISLATION

Marine mammals beach and strand themselves regularly along the shores and within the waters of the United States. Since the passage of the Marine Mammal Protection Act (MMPA) in 1972, efforts have been made nationwide to assist stranded marine mammals. These efforts have been conducted largely by stranding network participants, who, under section 112(c) of the MMPA, hold Letters of Agreement (LOAs) from the National Marine Fisheries Service (NMFS). These LOAs authorize participants to engage in stranding-related activities. Stranding network participants work primarily on a volunteer basis, and include both non-profit and for-profit organizations and institutions. Among the general goals of the stranding network are to derive maximum educational and scientific benefits from stranded marine mammals, which may lead to an improved ability to determine the causes of marine mammal strandings.

STRANDING NETWORK PARTICIPANTS

Federal responsibility for marine mammals resides in both the Department of Commerce (DOC) and the Department of the Interior (DOI). DOI is responsible for sea otters, manatees, walruses, and polar bears, while DOC is responsible for all other marine mammals, including whales, dolphins, seals, and sea lions. Both agencies

rely heavily on a volunteer network for responding to individual beachings or stranding events.

Stranding network participants are charged with the care and custody of marine mammals, which includes rescue, rehabilitation, and return to the wild or, if warranted, relocation or euthanasia of beached or stranded marine mammals. These efforts are financed through private and corporate donations and grants, without federal assistance. The response of stranding network participants to day-to-day stranding events has been extraordinary, considering many operate under funding constraints and with only volunteer help. Stranding network participants report on a monthly basis to the appropriate Regional NMFS office on the marine mammals that have been or are presently in their care. The information is then sent from the Regional NMFS Offices to the National NMFS Office of Protected Resources in Silver Spring, Maryland.

It is unlawful, under the MMP, for any person to "take" a marine mammal (i.e., harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal) without federal authorization. Because rescuing a stranded marine mammal is considered a "take", stranding network participants are given authority to do so under sections 112(c) and 109(h)(1) of the MMPA.

Although H.R. 3486 will not provide direct financial assistance for day-to-day operations within the stranding network, it will offer indirect assistance. The Secretary will be required to gather and compile information on the rescue and rehabilitation of marine mammals, and to develop objective criteria for determining the point at which a rehabilitated marine mammal can be returned to the wild. H.R. 3486 also requires the Secretary, through the Office of Protected Resources, to produce guidelines for the collection, preservation, labeling, transport, and quality-controlled archiving of marine mammal tissue samples in the National Marine Mammal Tissue Bank. These guidelines will also be made available as guidance for day-to-day collections by stranding network participants who wish to use them. The Secretary will provide access to the NMFS information data base for investigations into marine mammal health and population trends, and for relating of those stranding network participants who request it.

MARINE MAMMAL UNUSUAL MORTALITY EVENTS

Three specific events triggered the need for this legislation—the stranding of 14 humpback whales off Cape Cod in 1987, the bottlenose dolphin die-off along the Atlantic seaboard in 1987-88, and the EXXON VALDEZ oil spill in Prince William Sound in 1989. These unusual mortality events (unexpected marine mammal stranding events that cause significant die-offs of marine mammal populations and require immediate responses) demonstrated that existing law did not provide for effective, coordinated responses to catastrophes of this nature. H.R. 3486 recognizes that to overcome mismanagement and uncoordinated response to these unusual mortality events, pre-planning, consistent training, and a known chain of command are necessary.

H.R. 3486 requires the Secretary to establish an unusual mortality event working group that will—

- (1) Determine when an unusual mortality event is occurring;
- (2) Determine the point at which an usual mortality event is concluded;
- (3) Develop a contingency plan which allows for a coordinated response to an event; and
- (4) Identify individuals or organizations that can assist the Secretary in a coordinated and effectiveness response.

The contingency plan will maximize our chances for identifying causes of unusual mortality events and their effects on marine mammal populations. Also, the roles played by physical, chemical and biological factors hopefully will be elucidated.

H.R. 3486 authorizes the Secretary, in consultation with the Secretary of the Interior, at the start of any marine mammal unusual mortality event, to choose an Onsite Coordinator, who will be responsible for directing and managing the appropriate response to that particular event.

MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS

Strandings and unusual mortality events can be used as learning tools to diagnose the health of marine mammal populations. If a marine mammal is still live or freshly dead, tissues can be collected for analysis, the results of which may lead to an explanation of what caused the marine mammal to strand. During the more than 15 years the stranding networks have been operating, tissues have been collected, but methods of tissue collection, preparation, storage, and examination have been variable and not standardized.

H.R. 3486 will coordinate existing facilities for the archiving of marine mammal tissues into a National Marine Mammal Tissue Bank. NMFS, in consultation with the marine mammal scientists, will issue recommended guidelines for collection, preparation and archiving of tissues, as well as recommended, best-available, tissue analysis techniques. Thus, information from one event will be comparable to information from another event, and all these will be able to be referenced to standard samples taken from non-stranded marine mammals in the wild. Sources of these samples will be marine mammals caught accidentally in fishing operations, taken by native fishermen under special subsistence permits, or sampled from live marine mammals in the wild and achieved in the National Marine Mammal Tissue Bank.

Of all the provisions in H.R. 3486, it is anticipated that archived tissue samples and standardized, quality-controlled tissue analyses will provide the most insightful evidence for determining why marine mammals strand, how unusual mortality events occur, and when these events are detrimental to marine mammal populations.

COMMITTEE ACTION

H.R. 3486 was introduced on October 3, 1991, by Mr. Carper, Mr. Saxton, Mr. Jones, Mr. Studds, and others.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment met on June 25, 1992 to consider H.R. 3486. At that time Mr. Carper, Mr. Saxton, and Mr. Studds offered an amendment in the nature of a substitute, which clarified the process by which the Secretary gathers and compiles information and

specified the protocol the Secretary is required to follow during a marine mammal unusual mortality event. The bill, as amended, was ordered reported to the Full Committee by voice vote.

The Full Committee met on July 1, 1992, to consider the bill. Mr. Saxton and Mr. Carper offered an en bloc amendment that addressed two issues: (1) development and implementation by the Secretary of objective criteria for determining at what point a rehabilitated marine mammal can be returned to the wild; and (2) liability.

The Committee approved this en bloc amendment by voice vote and ordered H.R. 3486 reported to the House of Representatives.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The short title is the "Marine Mammal Health and Stranding Response Act".

SECTION 2. FINDINGS

Section 2 sets forth eight Congressional findings regarding the lack of effective programs for assessing the health of marine mammals in the wild, and for responding to marine mammal strandings, including unusual mortality events (i.e. die-offs).

SECTION 3. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

Section 3(a) adds a new Title III to the Marine Mammal Protection Act, creating the Marine Mammal Health and Stranding Response Program. The new title is divided into the following subsections:

Section 301. Establishment of program

Section 301(a) would require the Secretary of Commerce ("the Secretary") to establish the Marine Mammal Health and Stranding Response Program.

The Secretary will have full administrative and operational responsibility for ensuring that the procedures in this title are followed. However, the Committee does not intend for the Secretary to exclude the Secretary of the Interior from the process of being consulted regularly during an unusual mortality event, if that event should involve a marine mammal under the jurisdiction of the Department of the Interior. In addition, the Committee expects that this program will focus not only on cetaceans (whales and dolphins), but equally on pinnipeds (seals, sea lions, walruses), sea otters, manatees, and polar bears.

Subsection (b) states that the purposes of the program are to—(1) facilitate collection and dissemination of reference data on marine mammals; (2) correlate the health of marine mammals in the wild with available data on physical, chemical, and biological parameters; and (3) coordinate effective responses to marine mammal unusual mortality events by establishing a process within the Department of Commerce to do so.

By "reference data" the Committee means data, such as biotoxin, pollutant, and contaminant tissue levels, from which comparisons

can be made. Such comparisons will help determine if trends observed are either normal fluctuations and ranges or statistically significant changes over time within the biological system being examined.

Throughout this title, the phrase "in the wild" is used to ensure that nothing in this title is meant to regulate any species of marine mammals currently held in captivity at aquaria, zoos, or other facilities in the United States.

The Committee expects the Secretary to actively seek out and consult with other agencies to compile information on "physical, chemical, or biological parameters". Examples include: water sampling results from the Environmental Protection Agency (EPA); microbiological testing from the Centers for Disease Control; oil viscosity and composition testing by the Coast Guard; weather data from the National Oceanic and Atmospheric Administration (NOAA); and habitat degradation, human disturbance, or food availability data from the Fish and Wildlife Service, all of which could have been documented at or near the same time or location as a marine mammal unusual mortality event. The Committee also intends for the Office to gather existing data from programs such as EPA's Environmental Monitoring and Assessment Program and NOAA's Status and Trends Program.

The Committee does not intend that the National Marine Fisheries Service or the U.S. Fish and Wildlife Service will actually conduct any programs of marine environmental research, but rather they will gather information already being collected from other appropriate government and private entities and correlate that information with marine stranding events.

Section 302. Determination, data collection, and dissemination

Section 302(a) directs the Secretary to, within 24 months of enactment, develop and implement objective criteria, on a species-by-species basis, for determining at what point a marine mammal that has been rescued and rehabilitated is returnable to the wild.

Historically, for the past 15 years stranding network participants have been rescuing and rehabilitating marine mammals. Details on how to rescue and rehabilitate marine mammals have grown out of trial, error, and experience. Criteria for determining at what point these rehabilitated marine mammals are either ready to be returned to the wild, or if not releasable, ready to be moved to a permanent display or academic facility, has traditionally fallen within the purview of the stranding network participant in consultation with veterinarians and animal care committees. This Title will expedite that process by requiring that NMFS gather the rescue, rehabilitation, and release criteria being used by individual field institutions and compile them into usable objective criteria for standardized use. The Committee expects that the criteria developed and implemented by the Secretary will allow relative leeway for veterinary best judgment decisions.

In order to develop the criteria as required by section 302(a), subsection (b) requires that the Secretary and the Secretary of the Interior gather, compile, and periodically update, existing information on procedures and practices for rescuing, rehabilitating, and returning stranded marine mammals to the wild. Additionally, the

Secretary is directed to collect and catalog appropriate scientific literature and information on marine mammal health, disease, rehabilitation, strandings, life history, and reference level data.

The Committee intends that the majority of the "life history and reference level data" will come out of library collections located at the Marine Mammal Commission, the National Marine Mammal Laboratory Library, and the Smithsonian Institution. In addition, the Committee expects that NMFS will contact the Food and Agriculture Organization of the United Nations and gather whatever information they might have available within their United Nations Environmental Program Regional Seas Bibliography.

Subsection (c) directs the Secretary to make all information collected under section 302 available for stranding network participants and other qualified scientists to utilize while conducting studies on marine mammal health, disease, and strandings.

Section 303. Stranding response agreements

Section 303(a) concerns Letters of Agreement (LOAs) under sections 112(c) and 109(h)(1) of the Marine Mammal Protection Act, which the Secretary is required to enter into in order for a marine mammal to be rescued ("taken") during a stranding or unusual mortality event.

Subsection (b) requires that the LOAs contain, at a minimum, the name of the person (i.e. stranding network participant performing rescue and rehabilitation) who is authorized to take marine mammals, and specific terms and conditions for responding, reporting, and delegating authority to another person. The Committee anticipates that LOAs will be standardized nationwide.

Subsection (c) requires the Secretary to periodically update these LOAs for performance adequacy and effectiveness. Depending on the facility's history, the length of time the facility has been in existence, and the degree of veterinary medical expertise within the facility, the Secretary may choose to review that facility more or less often for performance adequacy and effectiveness. The Committee expects that those facilities for which complaints exist will be reviewed more frequently.

Inherent in this section is the Committee's intent that persons not authorized by LOAs may not legally respond to a stranding or unusual mortality event without first entering into such an agreement with the Secretary or acting under an already authorized stranding network participant's LOA.

Section 304. Unusual mortality event response

Section 304(a) requires the Secretary, in consultation with the Secretary of the Interior, to establish a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary. The working group will help the Secretary:

- (i) Determine whether an unusual mortality event is occurring;

(ii) Determine, once a response has begun, when that particular response to an unusual mortality event should be concluded; and

(iii) Develop a contingency plan to assist the Secretary in responding to unusual mortality events.

The unusual mortality event working group will also be responsible for determining if an unusual mortality event is occurring, defined as an unexpected, "significant" die-off of any marine mammal population that demands immediate response. There is the potential if an area is very remote or if a very rare species of marine is involved that only one or a few animals will be considered "significant"; this will be determined by the working group based on the best professional judgment of its members.

Subsection (a)(1)(B) states that the Federal Advisory Committee Act (FACA) will not apply to the marine mammal unusual mortality event working group. FACA is waived for two reasons:

(1) To allow the Secretary to work with the unusual mortality event working group, particularly when immediate action is required; and

(2) To allow the working group to be a continuum, not subject to reappointment on a two-year basis and not subject to the filing of annual reports. The Committee does expect that minutes will be kept of all formal meetings of the working group.

Subsection (a)(2) requires specific times within which the Secretary must respond to an unusual mortality event. In general, the Secretary must contact as many working group members as possible within 24 hours of notification by a stranding network participant that an unusual mortality event may be occurring. The Secretary must also determine the need for and designate an Onsite Coordinator within 48 hours, if the Secretary determines that an unusual event is occurring.

By employing the phrase "to the extent necessary and practicable", the Committee intends that the Secretary shall, within 24 hours of a suspected unusual mortality event, contact as many working group members as possible to query their opinions on whether an unusual mortality event is occurring. For instance, if there is a potential bacterial or viral problem, the Secretary and the working group may wish to gather additional information on numbers, species, sexes, ages, and specific conditions of those animals that might be stranding to aid in their assessment of whether an unusual mortality event is occurring. They have leeway to do this, using what the Committee assumes will be their own best judgments based on past experience. The Committee recognizes the fact that emergency situations may require a degree of flexibility in the process.

For the majority of potential unusual mortality events, however, the Committee expects the Secretary to contact the unusual mortality event working group within 24 hours of being contacted by a local stranding network participant, and, with its guidance, decide whether an event is or is not occurring within 48 hours.

If the Secretary determines that an unusual mortality event is occurring, then the Secretary must within that same 48 hours, and in consultation with the Secretary of the Interior, if appropriate,

designate an Onsite Coordinator. The Onsite Coordinator shall immediately make recommendations to the stranding network participant on how to proceed, whether by following a contingency plan (as detailed below) or (if no contingency plan exists or if the existing contingency plan is inappropriate for the situation), by following the best professional judgment of the Onsite Coordinator in responding to the unusual mortality event.

Subsection (b) details the contents of a contingency plan. The contingency plan will, at a minimum: (1) contain a list of persons, including stranding network participants, and persons at all levels (local, state, and national), who can assist the Secretary in implementing a coordinated and effective plan; (2) describe the types of tissues and tissue analyses necessary to assist in diagnosing causes of unusual mortality events; (3) establish procedures for training, mobilizing, and using available personnel, facilities, and other resources; (4) ensure rapid and effective response to emergencies and unusual mortality events; and (5) minimize death of marine mammals in the wild and provide appropriate care for marine mammals during an unusual mortality event. It is also the intention of the Committee that, in developing the "detailed" contingency plan, the specific rescue and rehabilitation techniques of individual species, as well as the potential geographical ranges of those species, will be addressed. As examples, the contingency plan should address the differences in care and handling between sea otters, polar bears, and fur seals, while alternatively, it might combine the responses to certain coastal small cetaceans or deep-diving seals together in family groupings.

The contingency plan should pinpoint centers of scientific knowledge (for example, centers with skills in pathology, microbiology, parasitology, toxicology, immunology, endocrinology, epidemiology, and ecology) to call on during unusual mortality events, and which will assist with response implementation and maximization of data utilization.

The contingency plan is meant to assist in determining the causes of an unusual mortality event, the effects any particular event may have on marine mammal populations that are affected by the event, and identify influencing roles, if any, that physical, chemical, and/or biological factors may have, including any potential roles played by pollutants or contaminants.

By "physical, chemical, and biological factors" the Committee means those situations, such as geophysical catastrophes, chemical spills, pollutant or contaminant discharges, biotoxins, microbial or parasite infestations, and any other unspecified emergencies affecting marine mammals in the wild.

The contingency plan or other response to an unusual mortality event should not invalidate any existing permits for scientific research or public display. During a recent Gulf of Mexico die-off, the public display community instituted a voluntary moratorium on taking marine mammals for display. The Committee expects that the community will voluntarily continue such practices.

Subsection (c) discusses designation and duties of the Onsite Coordinator. The Onsite Coordinator is designated by the Secretary in consultation, when appropriate, with the Secretary of the Interior. If more than one species is involved, if species from both Com-

merce's and Interior's purview are involved, if the numbers of animals involved is large, or if the range of the event is wide, more than one Onsite Coordinator may be designated. If more than one Onsite Coordinator is designated, however, one of them will be selected by the Secretary to be the primary Onsite Coordinator.

The Onsite Coordinator will be designated within the same time-frame as the appropriate stranding network participant is informed that an unusual mortality event is indeed occurring. The Onsite Coordinator will be chosen from appropriate personnel of the Regional Offices of either the National Marine Fisheries Service or the U.S. Fish and Wildlife Service. The Committee anticipates that the choice of Regional Director or his/her designee will be based either on the location of the event or the marine mammal expertise of the individual so designated. The Onsite Coordinator will manage personnel and facility usage, act as a liaison between the local stranding network participants and the Office, and coordinate public relations. The Onsite Coordinator will also direct the response process under the contingency plan, or, if the contingency plan is incomplete, inadequate, or not applicable to the situation at hand, will use his/her best professional judgment. The Onsite Coordinator may, in the case of an emergency or unique situation, temporarily modify the existing contingency plan using his/her own best judgment. In the event that a modification is necessary, the Onsite Coordinator must consult as expeditiously as possible with the Secretary regarding the reasons for the change, and allow the Secretary, consulting with the unusual mortality event working group, to advise on any additional response procedure changes. The phrase "as expeditiously as possible" is meant to give the Onsite Coordinator a small amount of leeway in the event of an emergency.

The Committee does not intend that the authority conveyed by this Act will, in any way, supercede, modify, or limit the duties, and responsibilities of any person under the Oil Pollution Act of 1990 or the Comprehensive Environmental Response, Compensation, and Liability Act.

Section 305. Unusual mortality event activity funding

Section 305(a) establishes a "Marine Mammal Unusual Mortality Event Fund".

Subsection (b) establishes uses for the Fund. The Fund is to be made available only to the Secretary and only for responding to unusual mortality events. However, the Committee intends that the Secretary will consult with the Secretary of the Interior if species under the jurisdiction of the DOI are the marine mammals primarily involved in the unusual mortality event. The Secretary of Commerce will, if that is the case, act administratively and deliver the funds required by the Secretary of the Interior for responding to that particular unusual mortality event. Monies from the Fund will be available to compensate "special costs" incurred in responding to these events and costs of preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank.

By "special costs" the Committee intends for NMFS to compensate stranding network participants only for those items which

NMFS recommends the stranding network participant have on hand and which are not included as standard rescue or rehabilitation equipment. For example, during the EXXON VALDEZ oil spill in Alaska, emergency washing facilities had to be set up to clean the otters; purchasing the tubs and plumbing materials might be considered a "special cost". The Committee does not anticipate that gasoline or transport vehicles, or even earth-moving equipment or carcass disposal would be "special costs", since local, county, or State entities normally take responsibility for these items.

An example of costs incurred in preparing and transporting tissues is liquid nitrogen which, because of its cost and storage requirements, is not normally a material stranding network participants have available for day-to-day responses. The Committee expects that NMFS will cover costs such as these, as well as costs for shipping properly collected tissues to the Tissue Bank. All reimbursement by NMFS will be done assuming the stranding network participant has asked for and received permission or authorization to purchase or ship the item, saved the receipts, and filed a claim.

Monies from the Fund will remain available until expended. If the Fund is emptied of monies and pending authorized claims are still outstanding, those claims shall remain pending until such time as there are monies available. The authorized, pending claims shall then be distributed on a first-come, first-served basis.

The "pending claims" subparagraph clarifies that stranding network participants will not be reimbursed by NMFS if they have not received permission for the purchase, if they have not properly filed the claim, or if no monies are available in the Fund to satisfy the claim.

Subsection (c) details that deposits into the Fund will include:

- (1) Amounts appropriated to the Fund,
- (2) Other amounts that may be appropriated to the Secretary in future years for use in unusual mortality events, and
- (3) Any monies received specifically for the Fund in the form of gifts, devises, or bequests.

Subsection (d) permits the Secretary to accept, solicit, and use the services of volunteers, and to accept, solicit, receive, hold, administer, and use any gifts, devises, and bequests. The Committee's intent in giving the Secretary this authority is to enhance the methods by which monies can be collected and dispersed during unusual mortality events involving marine mammals. This section was included to allow the Secretary to accept offers of money and volunteer services during times of emergencies, such as unusual mortality events involving marine mammals in the wild.

Section 306. Liability

Section 306(a) deems a person authorized to respond to a stranding an employee of the government and thus protected by the Federal Tort Claims Act (28 U.S.C. 171). These persons are considered federal employees if they are acting in accordance with a section 112(c) Letter of Agreement or, in the case of an unusual mortality event, acting pursuant to, and in accordance with, either the contingency plan or the best professional judgment of the Onsite Coordinator for any matter not covered by the contingency plan.

Subsection (b) limits the government's liability to simple negligence and not to gross negligence or willful misconduct on the part of the person responding.

For purposes of responding to day-to-day strandings and unusual mortality events, any 112(c) letterholder, including any stranding network participant as defined in this title, shall be considered a Federal employee for the purposes of affording them protection from liability in cases of simple negligence. The stranding network participants are actually acting for the Secretary, essentially as good Samaritans. Thus, the Committee intends to provide those stranding network participants some degree of protection from liability. In the case of simple negligence, it is anticipated the Secretary will be liable, since the letterholder is acting under the contingency plan or at the direction of the Onsite Coordinator. Only in cases of gross negligence or willful misconduct will a stranding network participant or letterholder not be protected.

Section 307. National marine mammal tissue bank and tissue analysis

Section 307(a) requires the Secretary to make provision for the storage, preparation, examination, and archiving of marine mammal tissues. The Committee intends that the National Marine Fisheries Service's Office of Protection Resources will coordinate existing facilities for the archiving of marine mammal tissues into the National Marine Mammal Tissue Bank. The Secretary will set up an identification, tracking, and routing system for tissues coming into and going out of the Tissue Bank.

Presently, there are marine mammal tissues stored at various facilities around the country, including stranding network facilities, clinical laboratories, academic institutions, the National Marine Mammal Laboratory in Seattle, the American Type Culture Society in Baltimore, and the Armed Forces Institute of Pathology and Smithsonian Institution, both in Washington, D.C. However, the majority of these marine mammal tissues are not of adequate quality for inclusion in the Tissue Bank. Any tissues not collected according to the strict, standard, quality-controlled guidance issued under this subsection will not be included in the Tissue Bank. The Committee anticipates that the National Marine Fisheries Service will certainly, if requested by a collector, direct those tissues not strictly collected and preserved to other appropriate tissue repositories around the country.

Tissues from non-stranded marine mammals will also be included in the Tissue Bank. Sources for these tissues include incidental takes by fishermen, subsistence hunting activities by native Americans, and live animal biopsies in the wild. Only those tissues collected according to the Secretary's guidance will be included in the Tissue Bank as reference samples. The Committee expects that tissues form marine mammals that die during unusual mortality events, or during rehabilitation following rescue from the wild, will be included for comparative purposes, if collected appropriately.

There is the potential that the Tissue Bank will, for some species of marine mammals (i.e. endangered or threatened species), be in dire need of comparative and reference tissues, whereas in other cases the species of marine mammal may be common enough that

the collection of tissues for that species in the National Marine Tissue Bank will be adequate. In any case, the Committee expects that superfluous or duplicative efforts will be avoided. These decisions, however, will be up to the Secretary and the Secretary of the Interior.

Currently the National Marine Fisheries Service has responsibility for marine mammal tissues, including those tissues from the Alaska Marine Mammal Tissue Bank, which are stored at the National Institute of Standards and Technology (NIST). NIST itself is under contract from the National Marine Fisheries Service to store the tissues at their facility. The Committee does not intend that National Marine Fisheries Service will establish any new facility for the archiving of tissues, but to use existing facilities.

Subsection (b) directs the Secretary, utilizing a process similar to that in section 307(a), to develop and issue guidelines for use in tissue analysis. These directives will assist collection of blood, bone, fat, and other "non-tissue" materials to be analyzed in a manner that will allow results from one analysis to be compared to other analyses similarly collected and prepared. The Committee expects that these tissue analysis guidelines will include the "most-effective and advanced diagnostic technologies and tools practicable" for assessing overall health or disease in marine mammals. Again, the Committee does not intend that either National Marine Fisheries Service or the U.S. Fish and Wildlife Service will directly be performing these analyses, only providing guidance for standardized analysis in the public and private sectors.

Subsection (c) directs the Secretary to develop and maintain a central data base to ensure an effective means for tracking and accessing data on marine mammals, including relevant data on all samples collected for, and maintained in the Tissue Bank. Additional examples of data that the Committee minimally expects the National Marine Fisheries Service to include in its computerized data base are:

- (1) A bibliography of recent and current scientific papers and textbooks related to marine mammal strandings, unusual mortality events, health, disease, rehabilitation, and life history related to these topics. The Committee estimates approximately 10,000 to 12,000 appropriate references exist in both the scientific and government literature, the majority of which is not yet computer-cataloged at the Marine Mammal Commission in Washington, DC and the National Marine Mammal Laboratory Library in Seattle, Washington;

- (2) Collated basic minimum information documented by stranding network participants on a monthly basis and sent to their Regional offices, as well as any supplemental information such as current weather, tides, human/predator activities, etc.;

- (3) Incidental subsistence take numbers; and

- (4) Any other tissue samples properly taken, for instance during the course of any permitted scientific investigation designed to study issues unrelated to the Tissue Bank goals.

Marine mammal populations historically have been monitored indirectly by NMFS during fishery-marine mammal interaction studies. The Committee expects that the information gathered in

fisheries-marine mammal studies will also be incorporated into the data bank to assist scientists in population investigations.

The Committee also expects the data base to be compatible with standard hardware and software programs that a qualified scientist or a stranding network participant might have available for his/her use.

Subsection (d) directs the Secretary, in consultation with the Secretary of the Interior, to establish criteria, after an opportunity for public review and comment, for providing access for qualified scientists, including stranding network participants, to tissues in the Tissue Bank, to tissue analysis results and to other applicable marine mammal reference data and literature references in the data base.

Of all the provisions in this Act, it is anticipated that archived tissue samples, and standardized, quality controlled tissue analyses will provide the most insightful evidence for determining why marine mammals strand themselves, how unusual mortality events occur, and how detrimental these events are to marine mammal populations.

Section 308. Authorization of appropriations

This section authorizes the following amounts to be appropriated for carrying out this new title to the Marine Mammal Protection Act:

- (1) \$250,000 for fiscal 1993 and fiscal 1994 for administrative activities (all sections except sections 305 and 307);
- (2) \$250,000 for fiscal 1993 and fiscal 1994 for the Tissue Bank, Tissue Analysis and Data Bank (Sec. 307); and
- (3) \$500,000 to the Fund (Sec. 305) for fiscal 1993.

Section 3(b) directs the Secretary to implement, within 24 months after enactment of this new title: (1) sections 302(a) and 302(b) of the new Title III, gathering clearinghouse information and defining objective criteria for determining at what point a marine mammal is returnable to the wild, for use by stranding network participants; and (2) section 304(b) the preparation of a detailed contingency plan for responding to any marine unusual mortality event.

SECTION 4. CONFORMING AMENDMENTS

This Section adds Title III to the applicable purposes of the MMPA. These amendments to the MMPA will grant an exemption for authorized stranding network participants to rescue, transport and rehabilitate stranded or beached marine mammals in the time-liest fashion.

SECTION 5. DEFINITIONS

Section 5 defines the following terms: Secretary (meaning the Secretary of Commerce); Fund (the Unusual Mortality Event Fund); Office (the Office of Protected Resources within National Marine Fisheries Service); stranding (dead or live marine mammal on the beach or in the water, unable to return to its natural habitat under its own power); stranding network participant (letter-holders under section 112(c) and 109(h)(1)); tissue bank (section

307(a)'s National Marine Mammal Tissue Bank); and, unusual mortality event (a stranding that is an unexpected, significant die-off of marine mammals demanding immediate attention).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3486 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate by the Committee of the costs which would be incurred in carrying out H.R. 3486. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

With respect to the requirements of clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 3486 have been made by the Committee during the 102nd Congress.

With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3486 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Operations on the subject of H.R. 3486.

With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3486 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1992.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3486, the Marine Mammal Health and Stranding Response Act, as ordered reported by the House Committee on Merchant Marine and Fisheries on July 1, 1992. Assuming appropriation of the amounts authorized, CBO estimates that the govern-

ment would spend \$0.5 million in 1993, \$0.7 million in 1994, \$0.2 million in 1995, and \$0.1 million in 1996 to implement this bill. Because H.R. 3486 may affect direct spending, pay-as-you-go procedures would apply to this bill. As a result, the estimate required under clause 8 of House Rule XXI is attached. The bill would result in no additional costs to state or local governments.

H.R. 3486 would amend the Marine Mammal Protection Act of 1972 to establish a program to monitor marine mammal health trends, to correlate this data with environmental information, and to coordinate effective responses when a large number of marine mammals unexpectedly die. The bill would establish a Marine Mammal Unusual Mortality Event Fund in the U.S. Treasury to cover special costs incurred in addressing these unexpected deaths. In addition, the bill would require the Secretary of Commerce to establish a National Marine Tissue Bank for the storage, preparation, examination, and archiving of marine mammal tissues. Finally, the federal government would become liable for simple negligence on the part of persons authorized to respond to threatened or dead marine mammals.

It is difficult to estimate when the \$500,000 authorized for the Marine Mammal Unusual Mortality Event Fund would be spent, because such deaths are unpredictable. Based on information from the National Fisheries Management Service, CBO estimates that it is likely that the amounts in the fund would be spent in the first two years. We project that other spending would occur at historical rates for activities of the National Oceanic and Atmospheric Administration.

In addition to the authorized funding, the bill would allow the Secretary to solicit, accept, and spend private donations for the Unusual Mortality Event Fund. The collection and spending of donations would affect direct spending, but the amounts involved would be small and the net change in outlays in any year would be negligible.

The bill also would allow persons authorized to respond to marine mammal strandings to be deemed federal employees for the purpose of the Federal Tort Claims Act. Enactment of the bill would increase direct spending if such people are injured and successfully sue the federal government and if compensation is paid out of the Claims and Judgments Fund. CBO cannot predict the number of such incidences but expects outlays in any one year to be negligible.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John Patterson and Patricia Conroy, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, *Director*).

CONGRESSIONAL BUDGET OFFICE ESTIMATE¹

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollar]

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	(1)	(1)	(1)	(1)

Not applicable.

DEPARTMENTAL REPORTS

The Committee received the following favorable report on H.R. 3486 from the Department of Commerce on July 1, 1992. No other reports have been received on H.R. 3486.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, June 25, 1992.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on H.R. 3486, a bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated responses to strandings and catastrophic events involving marine mammals.

The Department supports H.R. 3486 with the suggested changes discussed in an enclosure to this letter.

MAJOR PROVISIONS OF H.R. 3486

H.R. 3486 would amend the Marine Mammal Protection Act (MMPA) to add a new title that would establish a marine mammal health and stranding response program. The purposes of the program include facilitating the identification of marine mammal health trends and ensuring effective responses to strandings and unusual mortality events.

The program would consist of three components. The first, a stranding response program, would provide for the rescue and rehabilitation of live stranded marine mammals and the collection of scientific information from dead stranded marine mammals. A group of marine science and marine conservation experts would comprise the second aspect of the program. This group would be responsible for contingency planning and related emergency response activities. The contingency plans are intended to facilitate efforts

¹ An estimate of H.R. 3486 as ordered reported by the House Committee on Merchant Marine and Fisheries on July 1, 1992. This estimate was transmitted by the Congressional Budget Office on July 21, 1992.

identify the cause of an emergency and the role of various physical, chemical and biological factors.

H.R. 3486 would establish a fund to compensate persons for costs incurred in responding to strandings and unusual mortality events. The fund would consist of amounts received as gifts and donations and appropriated monies.

The third component of the program would establish a National Marine Mammal Tissue Bank for archiving marine mammal tissues. The Secretary would be required to establish criteria to ensure the appropriate use of samples by governmental and non-governmental scientific researchers. The Secretary, in consultation with appropriate Federal and State agencies, and private and academic institutions, must monitor and determine the levels of contaminants in species of marine mammals in U.S. coastal waters. The Secretary would also be responsible for developing and maintaining a central data base for marine mammal tissue samples.

H.R. 3486 would authorize appropriations for the Department not to exceed \$500,000 for each of fiscal years 1992 and 1993 to implement this bill. H.R. 3486 would also authorize an additional \$500,000 in fiscal year 1992 for the new emergency response fund.

BACKGROUND

In 1981, NOAA set up a series of regional marine mammal stranding networks to rescue live stranded animals and collect basic scientific information. The members of the networks are primarily volunteers with specialized knowledge of marine mammals. They are not reimbursed for their activities by the Federal government. Over the five year period, 1984-1988, they responded to an average of 2,000 marine mammal strandings annually. Each year they provided information on about 600 cetacean strandings and 1,400 pinniped strandings. Information collected from stranded animals has contributed significantly to the body of scientific knowledge on marine mammals and has been used in management decisions made by the agency.

In 1987-88, there was a major die-off of Atlantic bottlenose dolphins on the Atlantic coast. The response to that event demonstrated several shortcomings that NOAA has taken steps to correct. First, there had been little advance planning for response to such events. NOAA has since taken steps to identify needs and resources for such responses. The stranding networks are a major component of such responses. NOAA has also constituted a Task Group on Unusual Marine Mammal Mortalities similar to that envisioned in section 303 of the bill. The Task Group is composed of specialists from a number of scientific disciplines and is consulted when a mortality event is suspected. The Task Group has been consulted five times since April 1991.

In addition, the 1987-88 die-off demonstrated that there was insufficient baseline information with which to make comparisons. This was particularly evident in the case of levels of anthropogenic contaminants. In 1990, NOAA took steps to establish a National Marine Mammal Tissue Bank that would archive tissues for comparison. As part of this program, NOAA has also been conducting real-time analyses of contaminants in a number of species. The

pilot program for the Tissue Bank has been completed, and efforts are being made to expand the scope of the Bank.

COMMENTS

This legislation would facilitate ongoing efforts by NOAA to assess the health and health trends of marine mammals. As noted above, NOAA has reviewed the operation of the existing marine mammal stranding networks and taken steps to upgrade their capability. Recently, the networks' activities have been challenged in a suit filed in Federal District Court in Massachusetts. Although NOAA is confident that it will prevail in the suit, clarifying the authority for such activities as provided by H.R. 3486 would eliminate any uncertainty. H.R. 3486 also represents a commitment to ensure the success of the stranding networks and tissue bank program and is supported by the Department. Specific comments and suggestions for improving the bill are enclosed.

CONCLUSION

The Department supports H.R. 3486 if amended as described in the enclosure. The changes recommended by the Department will facilitate NOAA's efforts to implement the Marine Mammal Stranding Response and Tissue Bank programs.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to Congress from the standpoint of the Administration's program.

Sincerely,

WENDELL L. WILLKIE, II

Enclosure.

SPECIFIC COMMENTS ON H.R. 3486

PROPOSED SECTION 302

Proposed section 302 of the MMPA (contained in section 3 of the bill) would establish statutorily a stranding response program similar to the marine mammal stranding networks that have operated on a voluntary basis during the past decade. If data collected from strandings are to be useful, central direction is required and H.R. 3486 would facilitate NOAA's efforts, in conjunction with other agencies, to coordinate responses to marine mammal strandings.

The Department is concerned, however, that proposed section 302—if read in conjunction with section 109(h)(1) of the Act (16 USC § 1379(h)(1))—could be misinterpreted to require NOAA's National Marine Fisheries Service (NMFS) to be responsible for carcass disposal. This has traditionally been handled by State and local governments which have the resources to dispose of waste materials. NOAA has neither the facilities nor the resources to assume this responsibility. The bill or accompanying legislative history should clarify that proposed section 302 is not intended to alter the responsibilities of Federal, State or local governments under section 109(h)(1) of the Act.

The Department is also concerned with proposed paragraph 302(b)(3) which states that one purpose of the program is to conduct biological and other types of analyses of marine mammal tissue samples. If this provision is interpreted to require the stranding response program to conduct specific types of tissue analyses, it may inhibit current data collection and research efforts. It may also significantly increase the cost of operating a tissue bank.

Under the current voluntary system, stranding network members must only provide basic biological data (e.g., species, sex, and size). As an incentive, volunteers who analyze tissue samples are permitted to use the information in their professional activities. Requiring specific analyses to be performed would likely reduce coverage because the volunteers would incur additional expenses for undertaking the analyses. If the purpose is to establish protocols and to provide only for those tissues to be used for the Tissue Bank, this paragraph should be part of section 305. Alternatively, if the intent of this paragraph is to upgrade the scientific information gained generally, it should be revised to read: "(3) Establish guidelines for the collection, preservation, labeling, and transportation of marine mammal tissues for physical, chemical, and biological analyses.". Either change would alleviate our concern.

PROPOSED SECTION 303

Proposed section 303 of the MMPA (contained in section 3 of the bill) would require the establishment of an emergency response group of marine science and marine conservation experts. NOAA strongly believes that the Secretary should have the discretion to accept or reject the recommendations of the group and that the language of proposed paragraph 303(a)(1) ("the Secretary shall utilize [this group] to respond") should be revised accordingly. This provision, in conjunction with proposed paragraphs 303(a)(2)(B) (requiring the response group to develop contingency plans for marine mammal emergencies) and 303(b) (requiring the Secretary to issue contingency plans) may not comport with the constitutional requirements of the Appointments Clause. U.S. Coast. art. II § 2, cl. 2. We defer to the views of the Department of Justice concerning this issue.

We recommend, however, that the Emergency Response Group functions consist of those currently performed by the Task Group on Unusual Marine Mammal Mortalities. This group is consulted to determine when an unusual mortality event is occurring, to provide guidance in structuring a specific response plan, and to help interpret results of analyses.

The Department is concerned regarding possible interpretations of the phrase "marine mammal emergencies or unusual mortality event" as it is used in proposed section 303. Failure to define the term "emergency" could result

in emergency response contingency plans being developed for routine strandings including mass strandings. Such strandings, however, are *not* emergencies. Over the last five years, the stranding networks have responded to an average of 2,000 strandings per year. These strandings are not unusual, and it would deplete limited resources to require that emergency response plans be developed and implemented for such occurrences. The stranding program adequately responds to these strandings. To avoid possible confusion and needless litigation we recommend deleting the reference to "emergency" throughout proposed section 303 when it appears in connection with "unusual mortality event".

SECTION 4

The proposed definition of the term "unusual marine mortality event" lists factors that, if present, would constitute such an event. However, the definition does not identify the person or entity responsible for making the determination that an unusual mortality event is occurring. We recommend amending the definition by adding the phrase "as determined by the Secretary" at the end of the sentence.

SECTION 5

Any additional funding for the program beyond the \$500,000 authorized per year for fiscal years 1992 and 1993 is inconsistent with the President's current budget request and Administration policy. Therefore, the authorization of appropriations contained in section 5 for the new emergency response fund should be deleted.

ADDITIONS TO H.R. 3486

The Department has interpreted portions of the MMPA to permit an exception—for stranding activities—to the general prohibition on the taking of marine mammals. Recently, the Department's longstanding interpretation, in which Congress has acquiesced, has been challenged in a lawsuit. H.R. 3486 provides an opportunity to clarify the longstanding interpretation. We recommend amending section 102 of the MMPA to exempt activities conducted under title III from the prohibitions. This can be done by adding a new paragraph in section 102 at the end of subsection (a) to read:

(6) Activities authorized pursuant to title III of this Act shall not be subject to paragraphs (1)-(5) above.

In addition, the Department suggests that the authority for exempting the stranding response program from portions of the ESA be clarified. We recommend the following language be added to H.R. 3486 at the end of proposed section 301:

"(c) For purposes of activities authorized under this title, the prohibitions contained in paragraphs 9(a)(1)(A), (B), (C), (D), and (G) of the Endangered Species Act (16 USC § 1538(A)(1)(A), (B), (C), (D) and (G)) shall not apply."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

TITLE III—MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM

(a) *ESTABLISHMENT.*—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program, to be known as the "Marine Mammal Health and Stranding Response Program".

(b) *PURPOSES.*—The purposes of the Program shall be to—

- (1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;
- (2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and
- (3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 304.

SEC. 302. DETERMINATION; DATA COLLECTION AND DISSEMINATION.

(a) *DETERMINATION FOR RELEASE.*—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) *COLLECTION.*—The Secretary shall, in consultation with the Secretary of the Interior, collect and update periodically, existing information on—

- (1) procedures and practices for—

(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) **AVAILABILITY.**—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

SEC. 303. STRANDING RESPONSE AGREEMENTS.

(a) **IN GENERAL.**—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) or section 112(c) in response to a stranding.

(b) **REQUIRED PROVISION.**—An agreement under this subsection shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) **REVIEW.**—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

SEC. 304. UNUSUAL MORTALITY EVENT RESPONSE.

(a) **RESPONSE.**—

(1) **WORKING GROUP.**—

(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

(i) determining whether an unusual mortality event is occurring;

(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

(B) The Federal Advisory Committee Act shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

(2) **RESPONSE TIMING.**—The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

(B) within 48 hours after receiving such notification—

(i) make a determination as to whether an unusual mortality event is occurring;

(ii) inform the stranding network participant of that determination; and

(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

(b) **CONTINGENCY PLAN.**—

(1) **IN GENERAL.**—The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

(2) **CONTENTS.**—The contingency plan required under this subsection shall include—

(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

(D) such requirements as are necessary to—

(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

(ii) assist in identifying the cause or causes of an unusual mortality event;

(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

(c) **ONSITE COORDINATORS.**—

(1) DESIGNATION.—

(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

(C) If, because of wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

(2) FUNCTIONS.—

(A) an Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

SEC. 305. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

(a) **ESTABLISHMENT OF FUND.**—There is established in the Treasury a fund to be known as the 'Marine Mammal Unusual Mortality Event Fund', which shall consist of amounts deposited into the Fund under subsection (c).

(b) USES.—**(1) IN GENERAL.**—Amounts in the Fund—

(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 304(b) or under the direction of an Onsite Coordinator for an unusual mortality event; and

(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

(B) shall remain available until expended.

(2) **PENDING CLAIMS.**—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

- (1) amounts appropriated to the Fund;
- (2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and
- (3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

(d) **ACCEPTANCE OF DONATIONS.**—For purposes of carrying out this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

SEC. 306. LIABILITY.

(a) **IN GENERAL.**—A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

- (1) in accordance with that agreement; and
- (2) in the case of an unusual mortality event, in accordance with—

- (A) the contingency plan issued under section 304(b);
- (B) the instructions of an Onsite Coordinator designated under section 304(c); or
- (C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

(b) **LIMITATION.**—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

SEC. 307. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

(a) **TISSUE BANK.**—

(1) **IN GENERAL.**—The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the "National Marine Mammal Tissue Bank".

(2) **GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.**—The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

- (A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

(B) documentation of procedures used for collecting, preparing, and archiving those samples.

(3) *SOURCE OF TISSUE.*—In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources, in the wild including—

(A) incidental takes of marine mammals;

(B) subsistence-caught marine mammals;

(C) biopsy samples; and

(D) any other samples properly collected.

(b) *TISSUE ANALYSIS.*—The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for monitoring and measuring, by use of the most effective and advanced diagnostic technologies and tools practicable overall health trends in representative species or populations of marine mammals, including—

(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

(c) *DATA BASE.*—

(1) *IN GENERAL.*—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

(2) *CONTENTS.*—The data base established under this subsection shall include—

(A) reference data on the health of marine mammals and populations of marine mammals; and

(B) data on species of marine mammals that are subject to unusual mortality events.

(d) *ACCESS.*—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

(1) marine mammal tissues in the Tissue Bank;

(2) analyses conducted pursuant to subsection (b); and

(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated—

(1) to the Secretary for carrying out this title (other than sections 305 and 307) \$250,000 for each of fiscal years 1993 and 1994;

(2) to the Secretary for carrying out section 307, \$250,000 for each of fiscal years 1993 and 1994; and

(3) to the Fund, \$500,000 for fiscal year 1993.

§ 1362. Definitions

For the purposes of this chapter—

(1) The term “depletion” or “depleted” means any case in which—

* * * * *

(11) **【The term】** (A) *Except as provided in subparagraph (B), the term “Secretary” means—*

【(A)】 (i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

【(B)】 (ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(B) *In title III, the term “Secretary” means the Secretary of Commerce.*

* * * * *

(15) *The term “Fund” means the Marine Mammal Unusual Mortality Event Fund established by section 305(a).*

(16) *The term “Office” means the Office of Protected Resources, in the National Marine Fisheries Service.*

(17) *The term “stranding” means an event in the wild in which—*

(A) *a marine mammal is dead and—*

(i) *is on a beach or shore of the United States, or*

(ii) *is in waters under the jurisdiction of the United States (including any navigable waters); or*

(B) *a marine mammal is alive and is—*

(i) *on a beach or shore of the United States and unable to return to the water;*

(ii) *on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or*

(iii) *in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.*

(18) *The term “stranding network participant” means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.*

(19) *The term “Tissue Bank” means the National Marine Mammal Tissue Bank provided for under section 307(a).*

(20) *The term “unusual mortality event” means a stranding that—*

(A) *is unexpected;*

- (B) involves a significant die-off of any marine mammal population; and
 (C) that demands immediate response.

16 U.S.C. 1372(a)

§ 1372. Prohibitions

(a) **TAKING.**—Except as provided in sections 1371, 1373, 1374, 1379, 1381, 1383, and 1383a of this title *or title III*, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this subchapter or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this subchapter, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this chapter.

16 U.S.C. 1379(h)(1)

§ 1379. Transfer of management authority

(h) **TAKING OF MARINE MAMMALS AS PART OF OFFICIAL DUTIES.**—

(1) Nothing in this subchapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382(c) of this title *or title III* from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

(A) the protection or welfare of the mammal,

(B) the protection of the public health and welfare, or

(C) the nonlethal removal of nuisance animals.

16 U.S.C. 1382(c)

§ 1382. Regulations and administration

(c) **CONTRACTS, LEASES, AND COOPERATIVE AGREEMENTS.**—The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this subchapter or *title III* and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

